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Attorney Docket No. RSW920030153US1 (7161-118U) **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of	:	Customer Number: 46320
Samar CHOUDHARY, et al.	:	Confirmation Number: 3845
Application No.: 10/663,952	:	Group Art Unit: 2194
Filed: September 16, 2003	:	Examiner: K. Verdi

For: USER-CENTRIC POLICY CREATION AND ENFORCEMENT TO MANAGE VISUALLY NOTIFIED STATE CHANGES OF DISPARATE APPLICATIONS

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed January 28, 2009, wherein Appellants appeal from the Examiner's rejection of claims 1-18.

I. REAL PARTY IN INTEREST

This application is assigned to IBM Corporation by assignment recorded on September 16, 2003, at Reel 014517, Frame 0793.

II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals and interferences.

III. STATUS OF CLAIMS

Claims 1-18 are pending and four-times rejected in this Application. It is from the multiple rejections of claims 1-18 that this Appeal is taken.

IV. STATUS OF AMENDMENTS

The claims have not been amended subsequent to the imposition of the Fourth and Final Office Action dated October 28, 2008 (hereinafter the Fourth Office Action).

V. SUMMARY OF CLAIMED SUBJECT MATTER

Referring to Figure 3 and also to independent claim 1, a user centric policy creation and enforcement method is disclosed. In block 310, state changes and action invocations in disparate applications are observed through visual views of the applications (lines 5-8 of paragraph [0030]). In block 320, correlations between the observed state changes and action invocations are established (lines 3-5 of paragraph [0031]). In block 330, rules in a policy are formulated based upon user selected ones of the established correlations (lines 1-5 of paragraph [0033]). Each of the rules specify a state change in at least one of the applications and at least one resulting action invocation in at least one other of the applications (line 6-9 of paragraph [0027]). The policy is applied to automatically respond to each subsequently observed state change with a specified action invocation (lines 5-9 of paragraph [0033]).

Referring to Figure 1 and also to independent claim 4, a user centric policy creation and enforcement system is disclosed. A policy interface unit 130 is coupled to a plurality of user interface views 120A-120n (lines 1-3 of paragraph [0019]) into corresponding disparate applications 110A-110n (lines 5-6 of paragraph [0019]). The policy interface unit 130 is

configured to establish a policy 140 (lines 1-4 of paragraph [0020]) to respond to observed state changes in selected ones of the applications 110A-110n with action invocations in others of the applications 110A-110n (lines 1-3 of paragraph [0021]), and also to enforce the established policy 140 by applying the action invocations responsive to observing the state changes (lines 1-7 of paragraph [0022]).

Referring to Figure 3 and also to independent claim 8, a machine readable storage having stored thereon a computer program for user centric policy creation and enforcement is disclosed. The computer program comprises a routine set of instructions for causing the machine to perform the following steps. In block 310, state changes and action invocations in disparate applications are observed through visual views of the applications (lines 5-8 of paragraph [0030]). In block 320, correlations between the observed state changes and action invocations are established (lines 3-5 of paragraph [0031]). In block 330, rules in a policy are formulated based upon user selected ones of the established correlations (lines 1-5 of paragraph [0033]). Each of the rules specify a state change in at least one of the applications and at least one resulting action invocation in at least one other of the applications (line 6-9 of paragraph [0027]). The policy is applied to automatically respond to each subsequently observed state change with a specified action invocation (lines 5-9 of paragraph [0033]).

Referring to Figure 3 and also to independent claim 11, a method for user centric policy creation and enforcement is disclosed. In block 310, state changes and action invocations in at least one application are observed in an initial policy interface unit through a visual view of the at least one application (lines 5-8 of paragraph [0030]). In block 320, correlations between the observed state changes and action invocations are established. In block 330, rules in a policy are formulated based upon user selected ones of the established correlations (lines 1-5 of paragraph

[0033]). Each of the rules specify a state change in at least one of the applications and at least one resulting action invocation in at least one other of the applications (line 6-9 of paragraph [0027]). The policy is applied to automatically respond to each subsequently observed state change with a specified action invocation (lines 5-9 of paragraph [0033]).

Referring to Figure 3 and also to independent claim 15, a machine readable storage having stored thereon a computer program for user centric policy creation and enforcement is disclosed. The computer program comprises a routine set of instructions for causing the machine to perform the following steps. In block 310, state changes and action invocations in at least one application are observed in an initial policy interface unit through a visual view of the at least one application (lines 5-8 of paragraph [0030]). In block 320, correlations between the observed state changes and action invocations are established. In block 330, rules in a policy are formulated based upon user selected ones of the established correlations (lines 1-5 of paragraph [0033]). Each of the rules specify a state change in at least one of the applications and at least one resulting action invocation in at least one other of the applications (line 6-9 of paragraph [0027]). The policy is applied to automatically respond to each subsequently observed state change with a specified action invocation (lines 5-9 of paragraph [0033]).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1-14 were rejected under 35 U.S.C. § 101;

2. Claims 1, 3-8, and 10-18 were rejected under 35 U.S.C. § 103 for obviousness based upon Hellerstein et al., U.S. Patent Publication No. 2002/0073194 (hereinafter Hellerstein), in view of Reddy et al., U.S. Patent Publication No. 2002/0091753; and

3. Claims 2 and 9 were rejected under 35 U.S.C. § 103 for obviousness based upon Hellerstein in view of Reddy and Srinivasa et al., U.S. Patent No. 6,965,900.

VII. ARGUMENT

THE REJECTION OF CLAIMS 1-14 UNDER 35 U.S.C. § 101

For convenience of the Honorable Board in addressing the rejections, claims 2-3 and 11-14 stand or fall together with independent claim 1; claims 5-7 stand or fall together with independent claim 4; and claims 9 and 10 stand or fall together with independent claim 8.

Claim 1

Independent claim 1 is directed to a "user centric policy creation and enforcement method" (emphasis added). 35 U.S.C. § 101 states that:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Within In re Bilski, 545 F.3d 943 (Fed. Cir. 2008) (en banc), the Federal Circuit "[clarified] the standards applicable in determining whether a claimed method constitutes a statutory 'process' under § 101." The Federal Circuit framed the issue as to whether a claimed method constitutes a statutory process as follows:

> The true issue before us then is whether Applicants are seeking to claim a fundamental principle (such as an abstract idea) or a mental process. And the underlying legal question thus presented is what test or set of criteria governs the determination by the Patent and Trademark Office ("PTO") or courts as to whether a claim to a process is patentable under § 101 or, conversely, is drawn to unpatentable subject matter because it claims only a fundamental principle.

At the outset, Appellants note that the Examiner has neither alleged nor provided any substantial evidence to support a finding that claim 1 attempts to claim either a fundamental principle or a

mental process. Therefore, the Examiner's has failed to set forth a prima facie case under 35 U.S.C. § 101.

However, should the Examiner put forth substantial evidence to establish that claim 1 recites a fundamental principle, the Federal Circuit within In re Bilski looked to the following test to determine whether a process claim is narrowly tailored so as to not preempt all uses of the fundamental principle:

> A claimed process is surely patent-eligible under § 101 if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing.

Thus, the machine-or-transformation test is a two-branched inquiry – a method claim satisfies 35 U.S.C. § 101 by being tied to a particular machine or transforming an article. Gottschalk v. Benson, 409 U.S. 63, 70 (1972).

Turning to the first branch, the Examiner has neither alleged nor presented any substantial evidence to support a finding that claim 1 is not tied to a particular machine or apparatus. The lack of the Examiner's analysis notwithstanding, claim 1 is recites observing state change and action invocations in disparate applications through visual views of the applications. As clearly described within Appellants' disclosure, the visual views of the applications are found within an integrated solutions console (i.e., a particular type of computer device specifically directed to the displaying portal views of disparate applications). Since the method of claim 1 is tied to a particular apparatus and meets the first test, claim 1 is directed to statutory subject matter under 35 U.S.C. § 101.

Claim 4

In the paragraph spanning pages 2 and 3 of the Fourth Office Action, the Examiner asserted the following:

> Claims 4-10 recite a "A user centric policy creation and enforcement system" ' however, it appears that an a user centric policy creation and enforcement system would reasonably be interpreted by one of ordinary skill in the art as software, per se since the body of the claim appears to be software. Applicant claims a policy interface unit and a plurality of user interface views, as described by Applicant's specification, appear to be software devices (i.e. data structures) which are functional descriptive material. However, function descriptive material is nonstatutory when claimed as descriptive material per se. Applicant describes the functionality of a policy interface unit and a plurality of user interface views but does not disclose any hardware structure. As such, it is believed that a user centric policy creation and enforcement system of claims 4-10 is reasonably interpreted as functional descriptive material, per se and non statutory. (emphasis added)

Appellants respectfully submit that the Examiner reasonable interpretation is entirely unreasonable. The claimed system would never be "interpreted by one or ordinary skill in the art as software, per se." Software, per se, is software without anything else (e.g., hardware). However, software per se cannot meet the limitations recited in claim 4. Software per se cannot be coupled or configured to establish a policy or enforce the established policy, as claimed. To be "coupled" requires some sort of physical/electrical connection, which is impossible with software, per se. Similarly, it is impossible for software, per se, to establish a policy or enforce a policy since software, per se, is incapable of being functional. Therefore, the Examiner's assertion that the claimed invention, as recited in claim 4, would be interpreted by one skilled in the art as "software, per se" is unreasonable and factually unsupported.

Claim 8

Contrary to the Examiner's assertion claim 8 is not directed to a "system." Instead, claim 8 recites a machine readable storage that is used to store a computer program. As would be recognized by one skilled in the art, a machine readable storage is a storage device, and thus,

claim 8 is directed to statutory subject matter under 35 U.S.C. § 101.

THE REJECTION OF CLAIMS 1, 3-8, AND 10-18 UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON HELLERSTEIN IN VIEW OF REDDY

For convenience of the Honorable Board in addressing the rejections, claims 3-8 and 10-18 stand or fall together with independent claim 1.

As is evident from Appellants' previously-presented comments during prosecution of the present Application and from Appellants' comments below, there are questions as to how the limitations in the claims correspond to features in the applied prior art. In this regard, reference is made to M.P.E.P. § 1207.02, entitled "Contents of Examiner's Answer." Specifically, the following is stated:

> (A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:
>
> ...
>
> (9)(e) For each rejection under 35 U.S.C. 102 or 103 where there are questions as to how limitations in the claims correspond to features in the prior art even after the examiner complies with the requirements of paragraphs (c) and (d) of this section, the examiner must compare at least one of the rejected claims feature by feature with the prior art relied on in the rejection. The comparison must align the language of the claim side-by-side with a reference to the specific page, line number, drawing reference number, and quotation from the prior art, as appropriate. (emphasis added)

Therefore, if the Examiner is to maintain the present rejections and intends to file an Examiner's Answer, the Examiner is required to include the aforementioned section in the Examiner's Answer.

Appellants have compared the statement of the rejection found on pages 5-10 of the Third Office Action with the statement of the rejection found on pages 3-9 of the Fourth Office Action.

Upon making this comparison, Appellants have been unable to discover any substantial differences between the respective statements of the rejection. As such, Appellants proceed on the basis that the Examiner's sole response to the arguments presented in Appellants' Second Response dated July 21, 2008 (hereinafter the Second Amendment) is found on pages 9-17 of the Fourth Office Action in the section entitled "Response to Arguments."

On October 10, 2007, the Patent Office issued the "Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.," 73 Fed. Reg. 57,526 (2007) (hereinafter the Examination Guidelines). Section III is entitled "Rationales To Support Rejections Under 35 U.S.C. 103." Within this section is the following quote from the Supreme Court: "rejections on obviousness grounds cannot be sustained by merely conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1741 (2007) (quoting In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)).

Referring to the first column on page 57,529 of the Examination Guidelines for Determining Obviousness, the following is a list of rationales that may be used to support a finding of obviousness under 35 U.S.C. § 103:

> (A) Combining prior art elements according to known methods to yield predictable results;
>
> (B) Simple substitution of one known element for another to obtain predictable results;

(C) Use of known technique to improve similar devices (methods, or products) in the same way;

(D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;

(E) "Obvious to try" - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;

(F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;

(G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

Upon reviewing the Examiner's analysis on pages 4 and 5 of the Fourth Office Action, the Examiner appears to be employing rationale (G). If the Examiner is not relying upon rationale (G), Appellants request that the Examiner clearly identify the rationale, as described in the Examination Guidelines for Determining Obviousness, being employed by the Examiner in rejecting the claims under 35 U.S.C. § 103.

Referring again to rationale (G), as discussed on page 57,534 of the Examination Guidelines, the following findings of fact must be articulated by the Examiner:

(1) a finding that there was some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;

(2) a finding that there was reasonable expectation of success; and

> (3) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

Referring to the paragraph entitled "Office Personnel as Factfinders" on page 57,527 of the Examination guidelines, the following was stated:

> Office personnel fulfill the critical role of factfinder when resolving the *Graham* inquiries. It must be remembered that while the ultimate determination of obviousness is a legal conclusion, the underlying *Graham* inquiries are factual. When making an obviousness rejection, Office personnel must therefore ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied. In certain circumstances, it may also be important to include explicit findings as to how a person of ordinary skill would have understood prior art teachings, or what a person of ordinary skill would have known or could have done. Factual findings made by Office personnel are the necessary underpinnings to establish obviousness.

In Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), the Supreme Court set forth the factual inquiries that are to be applied when establishing a background for determining obviousness under 35 U.S.C. 103. These factual inquiries are summarized as follows:

(A) Determine the scope and content of the prior art;
(B) Ascertain the differences between the prior art and the claims at issue;
(C) Resolve the level of ordinary skill in the pertinent art; and
(D) Evaluate any indicia of nonobviousness.

However, in order to make a proper comparison between the claimed invention and the prior art, the language of the claims must first be properly construed. See In re Paulsen, 30 F.3d 1475, 1479 (Fed. Cir. 1994). See also, Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1567-68

(Fed. Cir. 1987) (In making a patentability determination, analysis must begin with the question, "what is the invention claimed?" since "[c]laim interpretation, … will normally control the remainder of the decisional process.") See Gechter v. Davidson, 116 F.3d 1454, 1460 (Fed. Cir. 1997) (requiring explicit claim construction as to any terms in dispute).

Upon reviewing the Examiner's analysis in view of the requirements discussed above necessary for the Examiner to establish a prima facie case of obviousness, Appellants recognize numerous deficiencies in the Examiner's analysis.

Claim 1

On page 5 of the Third Office Action, the Examiner asserted that paragraph [0023] of Hellerstein teaches "establishing correlations between said observed state changes and action invocations." Appellants respectfully disagree. Regarding paragraph [0023] of Hellerstein, although Appellants acknowledge that this paragraph refers to constructing correlation rules, this passage is silent as to these rules being based upon both observed state changes and action invocations. Referring to paragraph [0044] it is stated that "[a]n analyst uses an event management decision support system 130 of the present invention to develop the correlation rules," but absent from the Examiner's cited passages is a teaching that the correlation rules are based upon observed state changes. Thus, Hellerstein fails to teach the limitations for which the Examiner is relying upon Hellerstein to teach.

In responding to similar arguments, the Examiner asserted the following on page 11 of the Third Office Action:

> In response to argument (2), examiner respectfully disagrees and notes that the features upon which applicant relies (i.e., rules being based upon both observed state changes and action invocations, the correlation rules are based upon observed state changes) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The Examiner's analysis fails to consider the claimed invention as a whole. As recited in claim 1, (i) state changes and action invocations are observed in disparate application; (ii) correlations are established between the state changes and the action invocations; and (iii) rules in a policy are based upon the established correlations. Thus, contrary to the Examiner's assertion above, the rules <u>are</u> based upon both the observed state changes and action invocations because the rules are based upon the correlations, which are based upon the state changes and the action invocations. Regarding "the correlation rules are based upon observed state changes," claim 1 explicitly states that the correlations are established "between said observed stated changes and action invocations." As such, Appellants are entirely unclear as to the basis of the Examiner's assertions.

The above-reproduced arguments (incorporated herein) were previously presented on page 10, line 4 through page 11, line 8 of the Third Response. The Examiner's response to the these arguments are found in the paragraph spanning pages 10 and 11 of the Fourth Office Action and reproduced below:

> In response to argument (2), examiner respectfully disagrees and notes that the Hellerstein discloses correlation rules are based upon observed state changes. Hellerstein teaches the event management system 110 updates the event database (Event DB) 180 with newly received events and reads this database to do event correlation based on a rule database (Rule DB) 185 (paragraph [0044], lines 1-3). For example the newly received events added to the Event DB are read for event correlation can be interpreted as correlation rules are based upon observed state changes since the event management system 110 receives events generated by computing devices of various types (i.e. observed state changes, paragraph [0043], lines 3-5) and an analyst 120 uses

> an event management decision support system 130 of the present invention to develop the correlation rules used by the management system, which requires reading historical event data in the Event DB and writing to the Rule DB (paragraph [0044], lines 3-7). Hellerstein teaches whereby correlation rules are constructed comprising the steps of: (1) the analyst marking one or more event groupings; 2) the machine learning the left-hand side for event patterns (paragraph [0023], lines 5-7). The visualization system in conjunction with event data access provide a mechanism for analysts to select event groupings that are then translated into left-hand sides by the pattern learner (paragraph [0026], lines 4-6).

The Examiner's analysis has lost track of the claim language at issue. The claim language being discussed is "establishing correlations between said observed state changes and action invocations." Assuming arguendo that the events described by Hellerstein correspond to the claimed observed state changes, Hellerstein does not teach establishing correlations between the "newly received events" and action invocations.

Paragraph [0044] teaches than an event database (Event DB) 180 is updated with the newly received events. Hellerstein further describes that the event management system 100 "reads the data to do event correlation based on a rule database (Rule DB) 185." Paragraph [0044] also describes that the management decision support system 130 is used to develop the correlation rules used by the event management system 100 to control the interactions with the operator 100. Although this passage refers to event correlation, this passage is silent as to establishing correlations between the newly received events (i.e., the claimed observed state changes) and action invocations. A rule, as described by Hellerstein, is not a correlation, as claimed. Instead, the claimed inventions recites that a rule is formulated based upon user selected ones of the established correlations. Thus, a rule and a correlation are different.

On page 5 of the Third Office Action, the Examiner relied upon paragraph [0049] to teach the claimed "applying said policy to automatically respond to each subsequently observed

state change with a specified action invocation." Appellants respectfully disagree. This passage refers to generating rules, but Appellants are unclear as to where this passage specifically teaches applying the policy to automatically respond to each subsequently observed state change with a specified action invocation, as claimed.

The above-reproduced arguments (incorporated herein) were previously presented on page 11, lines 10-15 of the Third Response. The Examiner's response to the these arguments are found in the paragraph spanning pages 11 and 12 of the Fourth Office Action and reproduced below:

> In response to argument (3), examiner respectfully disagrees and notes that the Hellerstein discloses applying the policy to automatically respond to each subsequently observed state change with a specified action invocation. Hellerstein teaches applying the rule's left-hand side to historical event data, selecting instances of the patterns specified by the rule (paragraph [0049], lines 14-16). For example applying the rule's left-hand side to historical event data can be interpreted as applying the policy to automatically respond to each subsequently observed state change with a specified action invocation since by doing so the operations staff can determine if the situations for which the rule is intended are in fact those that will be selected in production (paragraph [0049], lines 16-18), once evaluated the machine places the new rule in the Rule DB associated with the event management system (i.e. rule placed in production, applied policy, paragraph [0049], lines 18-20). In addition, if rules are determined to be a normal pattern, the rule is filtered by the event management system during real-time activities (paragraph [0056], lines 6-8). (emphasis added)

The Examiner's analysis ignores the claimed sequence by which the steps are performed.

As claimed, the state changes and action invocations are observed and then correlations between the observed state changes and action invocations are established. Once the correlations have been established, the rules in the policy are formulated. Once the policy is formulated, the policy is automatically applied to a subsequently observed state change. Thus, there is a specific order in which the steps are performed.

Referring to the underlined portion of the above-reproduced passage, the Examiner is alleging that historical event data corresponds to the subsequently observed state change. However, paragraph [0049] clearly describes that "the data visualization (e.g., Fig. 2) that are used to help generate the rules are formed from historical event data." Thus, the historical data exists prior to the rules being formed. Therefore, although the historical event data described by Hellerstein could correspond to a previously observed state change, the historical event data cannot correspond to the claimed subsequently observed state change.

Referring to the Examiner's secondary reference of Reddy, the Examiner asserted that in paragraph [0026], "Reddy discloses observing state changes and action invocations in disparate applications through visual views of said applications." Appellants respectfully disagree. At the outset, Appellants note that the Examiner has failed to provide a claim construction for the term "action invocations" and explicitly identify a specific teaching within Reddy that allegedly discloses the claimed "action invocation." Upon reviewing the Examiner's cited passage, Appellants have been able to identify that Reddy teaches that a log of events is kept. However, Appellants have been unable to find a teaching within Reddy of an action invocation being observed, as claimed. Thus, Reddy fails to teach the limitations for which the Examiner is relying upon Reddy to teach.

The above-reproduced arguments (incorporated herein) were previously presented on page 11, line 18 through page 12, line 4 of the Third Response. The Examiner's response to the

these arguments are found in the paragraph spanning pages 12 and 13 of the Fourth Office Action and reproduced below:

> In response to argument (4), examiner respectfully disagrees and notes that the Reddy discloses observing state changes and action invocations in disparate applications. Reddy teaches events service 80 provides the capability for a user of portal 20 to subscribe to particular notifications from monitors 74, such as notifications of state changes for a particular application 42 or an alert regarding an application 42 (paragraph [0020], Figure 2). For example an alert regarding an application can be interpreted as an observed action invocation since an alert is an action that occurs on an application error (i.e. state change) (paragraph [0020], lines 12-20) and Monitors 74 may perform any appropriate monitoring and management functions (i.e. observing an action invocation or alert, paragraph [0019], lines 20-21).

At the outset, Appellants note that while the Examiner previously solely relied upon paragraph [0026] to teach the limitations at issue, the Examiner is now relying upon paragraphs [0019]-[0020] of Reddy to teach the limitations at issue.

Notwithstanding that the Examiner has left contested Appellants' prior assertion that the Examiner's original cited passage fails to teach the limitations for which the Examiner was relying upon Reddy to teach, the Examiner now appears to be alleging that "an alert regarding an application can be interpreted as an observed action invocation." Appellants respectfully disagree with the Examiner's implied claim construction. The "alert" described by Reddy is not an action invoked from one application based upon a state change in a disparate application. Instead, the "alert" is just another way of phrasing the concept of a notification of a state change.

Appellants also note that the Examiner has ignored certain of the claim language, which is of "observing state changes and action invocations in disparate applications <u>through visual views of said applications</u>." The observation of the alleged state changes and action invocations have not been described as being performed "through visual views of said applications." Thus,

the Examiner has failed to establish that Reddy teaches all the limitations for which Reddy is being relied upon to teach.

On page 6 of the Second Office Action, with regard to the asserted rationale for modifying Hellerstein in view of Reddy, the Examiner asserted the following:

> It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the Event Management System of Hellerstein with the teachings of Application Monitoring and Management System from Reddy because this feature would have provided a mechanism that allows an entity to remotely monitor and manage a number of applications that are executing on a number of different computer systems associated with a number of different domains (paragraph [0006]).

At the outset, Appellants note that the Examiner's assertions are mere generalizations regarding the benefits of the teachings of Reddy, as a whole, and not to the specific modifications of Hellerstein that the Examiner is alleging one skilled in the art would make based upon the teachings of Reddy.

Moreover, it appears that this functionality is already present in the teachings of Hellerstein. For example, the exchange of data and/or events between disparate systems is ubiquitous is almost all networked systems. Also, Hellerstein teaches an event management system 110 that updates an event database with newly received events by computing devices of various types (see paragraph [0043]). As such, Appellants are unclear as to why one having ordinary skill in the art would have been impelled to modify Hellerstein in view of Reddy to obtain these alleged benefits since these alleged benefits do not appear to be additive to the teachings of Hellerstein.

The above-reproduced arguments (incorporated herein) were previously presented on page 12, lines 7-28 of the Third Response. The Examiner's response to the these arguments are found in the penultimate full paragraph on page 13 of the Fourth Office Action and reproduced below:

> In response to argument (5), examiner respectfully disagrees and notes that Examiner applied the factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), for determining obviousness under 35 U.S.C. 103, in light of KSR. The motivation for the combination is provided on page 6 of the Non-Final Office Action dated April 3, 2008. Examiner specifically provided analysis as required.

The Examiner is confused as to the difference between a conclusion and the analysis that supports the Examiner's conclusion. Appellants' position is that the little analysis previously-provided by the Examiner fails to establish why it would have been obvious for one skilled in the art to combine the teachings of Hellerstein and Reddy.

Reference is also made to Appellants' comments above with regard to the Examination Guidelines for Determining Obviousness. To employ Rationale G, the Examiner must articulate a finding that there was reasonable expectation of success. Moreover, the case law requires that the reasonable expectation of success be as to a particular benefit.[1] However, as already argued by Appellants, the alleged benefit of Reddy is already provided by the teachings of Hellerstein. Since the problem purportedly being addressed by Reddy has already been solved by Hellerstein, one having ordinary skill in the art would not have been realistically impelled to make the Examiner's proposed modification.[2]

---

[1] In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

[2] See the non-precedential opinion of Ex parte Rinkevich, Appeal 2007-1317 ("we conclude that a person of ordinary skill in the art *having common sense* at the time of the invention would not have reasonably looked to Wu to solve a problem already solved by Savill") (emphasis in original).

Claim 1 recites "each of said rules specifying a state change in at least one of said applications, and at least one resulting action invocation in at least one other of said applications." As such, the resulting action invocation is found in an application that is different than the application in which the state change occurs. Referring to the Examiner's analysis on page 4 of the Fourth Office Action, the Examiner asserted the following as to these limitations:

> each of said rules specifying a state change in at least one of said applications (paragraph [0044]), and at least one resulting action invocation in at least one other of said applications (paragraph [0018]).

Paragraphs [0018], [0044] of Hellerstein, however, are both silent as to "one of said applications" and an "other of said applications." Paragraph [0018] breaks a rule into a left-hand side (LHS) and right-hand side (RHS), but this passage fails to describe that the action taken on the RHS is in an application that is different than an application, in which the state change occurs (i.e., the condition or predicate portion of the LHS). Paragraph [0044] contains less description of the rules described by Hellerstein than that found in paragraph [0018]. As such, the Examiner has mischaracterized the scope and content of Hellerstein.

THE REJECTION OF CLAIMS 2 AND 9 UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON HELLERSTEIN IN VIEW OF REDDY AND SRINIVASA

For convenience of the Honorable Board in addressing the rejections, claim 9 stands or falls together with dependent claim 2.

Appellants respectfully submit that the Examiner's citation of Srinivasa to teach the limitation recited in claims 2 and 9 is inappropriate. At the outset, Appellants note that the "event" described by Srinivasa does not corresponding to the claimed "state changes in said applications." Instead referring to the Background of the Invention, Srinivasa describes an event

as "sporting events and entertainment events and the like." Thus, the identification of the event in Srinivasa by page crawling does not correspond to the claimed invention. Moreover, along the same lines, the paragraphs identified by the Examiner do not teach that the "events" are associated with applications (i.e., a plurality of applications).

Thus, Srinivasa fails to teach the limitations for which the Examiner is relying upon Srinivasa to teach. Therefore, Appellants respectfully submit that the imposed rejection of claims 2 and 9 under 35 U.S.C. § 103 for obviousness based upon Hellerstein in view of Reddy and Srinivasa is not viable and, hence, Appellants solicit withdrawal thereof.

The above-reproduced arguments (incorporated herein) were previously presented on page 14, lines 2-14 of the Third Response. The Examiner's response to the these arguments are found in the first full paragraph on page 15 of the Fourth Office Action and reproduced below:

> In response to argument (7), examiner respectfully disagrees and notes that the Hellerstein as further modified by Srinivasa discloses demarcating segments of said markup as segments which visually indicate state changes in said applications. Hellerstein as further modified by Srinivasa teaches if the markup page contains "TLE" patterns close in proximity then each sequence, in a markup page, can be marked as a potential event description. For example if the markup page contains "TLE" patterns close in proximity then each sequence, in a markup page (web document), can be marked as a potential event description which can be interpreted as demarcating segments of said markup as segments which visually indicate event descriptions (e.g. state changes in said applications) since the event description is event information extracted from tags in some existing markup language such as HTML or XML (col. 9, lines 25-45) and event descriptions are identified by a "TLE" pattern and then marked as a potential event description (col. 9, lines 35-45), which can be interpreted as markup which visually indicates state changes in said applications. In addition, Applicant's specification describes a state change as being represented as markup language in an XML document (paragraph [0025] Applicant's specification) in reference to demarcating segments of said markup as segments which visually indicate state changes in said applications. In this regard the event descriptions of Srinivasa and the state changes of the Applicant are both markup language.

Appellants' arguments were also previously presented in the Second Response, and as such, the above-reproduced comments represent the Examiner's second opportunity to address

the arguments raised by Appellants. Like the Examiner's first response to these arguments, the Examiner's second response evidences a failure, by the Examiner, to comprehend the points being raised by Appellants.

What is being claimed is 'state changes in an application,' which are alleged being disclosed by "events." However, the events described by Srinivasa are "sporting events and entertainment events and the like." By analogy, a "bus" is a subsystem within a computer that transfers data between components within the computer. However, the teaching of a school bus does not correspond to a computer bus simply because they both use the term "bus." Similarly, the "event" described by Srinivasa is not comparable to the events described in the other applied prior art, which are being used to allegedly teach the claimed state changes in an application.

The Examiner's alleged "response" completely ignores these issues, which were (twice) previously raised by Appellants.

The Examiner's first response to the arguments originally presented in the Second Response is found on page 14 and 15 of the Third Office Action. As in the Fourth Office Action, the Examiner does not appear to comprehend Appellants' arguments. Specifically Srinivasa is non-analogous prior art with no apparent relations to either the claimed invention or the other prior art. Instead, Srinivasa teaches a method for data mining documents for a "listing of events scheduled in the future of a selected interest to the user." Appellants' position is that the Examiner has neither established that Srinivasa is with the same field of endeavor nor

established that Srinivasa is reasonably pertinent to the particular problem which the invention is involved.

The above-reproduced arguments (incorporated herein) were previously presented on page 14, lines 16-23 of the Third Response. The Examiner's response to the these arguments are found in the last full paragraph on page 16 of the Fourth Office Action and reproduced below:

> In response to applicant's argument (8) that Srinivasa is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Srinivasa discloses a web crawler that detects events based on the co-occurrence patterns of the "T", "L", and "E" in a markup language document (col. 9, lines 26-34 of Srinivasa). In addition, Applicant's specification describes a state change as being represented as markup language in an XML document (paragraph [0025] Applicant's specification) in reference to demarcating segments of said markup as segments which visually indicate state changes in said applications. In this regard the event descriptions of Srinivasa and the state changes of the Applicant are both markup language.

The Examiner's analysis, which presumably concludes that Srinivasa is analogous prior art rests upon the finding that "the event descriptions of Srinivasa and the state changes of the Applicant are both markup language."

Appellants respectfully submit that the Examiner's view of what constitutes the same field of the invention is impermissibly broad. The fact that Srinivasa and Appellants' invention both involve the use of markup language is akin to asserting that any device (e.g., an airplane, a school bus, an oil tanker, a weed cutter) are all analogous both they all include an engine. Almost all inventions that involve networking and/or the internet use markup language. However, the fact that two inventions involve markup language make them analogous prior art no more than two inventions that both involve memory devices make them analogous prior art.[3]

[3] See Wang Laboratories, Inc. v. Toshiba Corp., 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993) (a reference describing a SIMM for an industrial controller was held to not necessarily be in the same field of endeavor as the

The use of markup language is incidental to both Appellants' invention and the teachings of Srinivasa. As such, the Examiner has failed to make sufficient findings of fact necessary to establish that Srinivasa is analogous prior art.

As to the Examiner's comments on page 15 of the Third Office Action that "the features upon which applicant relies (i.e., "events" are associated with applications) are not recited in the rejected claims(s)," Appellants respectfully disagree. As claimed, the state changes (allegedly disclosed by the "events") are "in disparate applications" (emphasis added). By being in the application, the state change is associated with the application, as previously asserted by Appellants.

The above-reproduced arguments (incorporated herein) were previously presented on page 15, lines 2-5 of the Third Response. The Examiner's response to the these arguments are found in the second full paragraph on page 17 of the Fourth Office Action and reproduced below:

> In response to argument (9), examiner respectfully disagrees and notes that the features upon which applicant relies (i.e., "events" are associated with applications) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The Examiner's alleged "response" is, yet again, non-responsive. The Examiner's response is identical to what the Examiner wrote in the second full paragraph on page 15 of the Third Office Action. As such, the Examiner has not even attempted to address Appellants' argument that the claimed invention, as recited in claim 2, refers to "state changes in said applications" (emphasis

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claimed subject matter merely because it related to memories).

added). Thus, the states changes (alleged disclosed by the "events") are associated with the applications.

For the reasons submitted above, Appellants respectfully submit that the imposed rejection of claims 2 and 9 under 35 U.S.C. § 103 for obviousness based upon Hellerstein in view of Reddy and Srinivasa is not viable.

Conclusion

Based upon the foregoing, Appellants respectfully submit that the Examiner's rejections under 35 U.S.C. §§ 101, 103 based upon the applied prior art is not viable. Appellants, therefore, respectfully solicit the Honorable Board to reverse the Examiner's rejections under 35 U.S.C. §§ 101, 103.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due under 37 C.F.R. §§ 1.17, 41.20, and in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: April 28, 2009

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1. A user centric policy creation and enforcement method comprising the steps of:

observing state changes and action invocations in disparate applications through visual views of said applications;

establishing correlations between said observed state changes and action invocations;

formulating rules in a policy based upon user selected ones of said established correlations, each of said rules specifying a state change in at least one of said applications, and at least one resulting action invocation in at least one other of said applications; and,

applying said policy to automatically respond to each subsequently observed state change with a specified action invocation.

2. The method of claim 1, wherein said step of observing comprises the steps of:

page crawling markup defining a visual view of said applications; and,

demarcating segments of said markup as segments which visually indicate state changes in said applications.

3. The method of claim 1, wherein said step of establishing comprises the steps of:

noting a time for each of said observed state changes;

further noting a time for each of said action invocations; and,

correlating said observed state changes with said action invocations based upon said noted times.

4. A user centric policy creation and enforcement system comprising

a policy interface unit coupled to

a plurality of user interface views into corresponding disparate applications,

said policy interface unit having a configuration both

for establishing a policy to respond to observed state changes in selected ones of said applications with action invocations in others of said applications, and also

for enforcing said established policy by applying said action invocations responsive to observing said state changes.

5. The system of claim 4, wherein said plurality of user interface views comprise portlet views.

6. The system of claim 4, wherein said policy interface unit is disposed within an integrated solutions console.

7. The system of claim 4, wherein said policy interface unit comprises a learning component, a user dialog component and an enforcement component, said learning component having a configuration for correlating observed events with action invocations to formulate proposed rules, said user dialog component having a configuration for accepting a user selection of said proposed rules, said enforcement component having a configuration for enforcing selected ones of said proposed rules.

8. A machine readable storage having stored thereon a computer program for user centric policy creation and enforcement, said computer program comprising a routine set of instructions for causing the machine to perform the steps of:

observing state changes and action invocations in disparate applications through visual views of said applications;

establishing correlations between said observed state changes and action invocations;

formulating rules in a policy based upon user selected ones of said established correlations, each of said rules specifying a state change in at least one of said applications, and at least one resulting action invocation in at least one other of said applications; and,

applying said policy to automatically respond to each subsequently observed state change with a specified action invocation.

9. The machine readable storage of claim 8, wherein said step of observing comprises the steps of:

page crawling markup defining a visual view of said applications; and,

demarcating segments of said markup as segments which visually indicate state changes in said applications.

10. The machine readable storage of claim 8, wherein said step of establishing comprises the steps of:

noting a time for each of said observed state changes;

further noting a time for each of said action invocations; and,

correlating said observed state changes with said action invocations based upon said noted times.

11. A method for user centric policy creation and enforcement comprising the steps of:

observing in an initial policy interface unit state changes and action invocations in at least one application through a visual view of said at least one application;

establishing correlations between said observed state changes and action invocations;

formulating rules in a policy based upon user selected ones of said established correlations, each of said rules specifying a state change in said at least one application, and at least one resulting action invocation in one of said at least one application and at least one other application; and,

distributing said policy to at least one other policy interface unit.

12. The method of claim 11, further comprising the step of enforcing said policy in said initial policy interface unit to automatically respond to each subsequently observed state change with a specified action invocation.

13. The method of claim 11, further comprising the step of enforcing said policy in said at least one other policy interface unit to automatically respond to each subsequently observed state change with a specified action invocation.

14. The method of claim 13, further comprising the step of limiting said enforcing of said policy in said at least one other policy interface unit based upon pre-defined permissions.

15. A machine readable storage having stored thereon a computer program for user centric policy creation and enforcement, the computer program comprising a routine set of instructions for causing the machine to perform the steps of:

observing in an initial policy interface unit state changes and action invocations in at least one application through a visual view of said at least one application;

establishing correlations between said observed state changes and action invocations;

formulating rules in a policy based upon user selected ones of said established correlations, each of said rules specifying a state change in said at least one application, and at least one resulting action invocation in one of said at least one application and at least one other application; and,

distributing said policy to at least one other policy interface unit.

16. The machine readable storage of claim 15, further comprising the step of enforcing said policy in said initial policy interface unit to automatically respond to each subsequently observed state change with a specified action invocation.

17. The machine readable storage of claim 15, further comprising the step of enforcing said policy in said at least one other policy interface unit to automatically respond to each subsequently observed state change with a specified action invocation.

18. The machine readable storage of claim 17, further comprising the step of limiting said enforcing of said policy in said at least one other policy interface unit based upon pre-defined permissions.

IX. EVIDENCE APPENDIX

No evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the Examiner has been relied upon by Appellants in this Appeal, and thus no evidence is attached hereto.

X. RELATED PROCEEDINGS APPENDIX

Since Appellants are unaware of any related appeals and interferences, no decision rendered by a court or the Board is attached hereto.